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Attorneys for Defendant
DOLLAR TREE STORES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT RUNNINGS individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

DOLLAR TREE STORES, INC, and DOES
1 through 25, inclusive,

Defendants.

CASE NO. **07 4012**
Alameda County Superior Court
Case No. RG 07334249

**NOTICE OF REMOVAL AND
CERTIFICATE OF INTERESTED
ENTITIES**

COMPLAINT FILED: July 6, 2007
TRIAL DATE: No date set.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Dollar Tree Stores, Inc. ("Dollar Tree"), by counsel, hereby removes this action from the Superior Court of California for the County of Alameda (the "State Court") to this Court. This removal is based upon the following grounds:

PLEADINGS AND PROCEEDINGS TO DATE

1. On July 6, 2007, Plaintiff Robert Runnings ("Plaintiff") filed a Complaint in the State Court styled, *ROBERT RUNNINGS individually, and on behalf of all others similarly situated v. DOLLAR TREE STORES, INC, and DOES 1 through 25, inclusive*, Alameda County Superior Court Case No. RG 07334249. A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

2. Service of the Complaint and accompanying Summons was effected on Dollar Tree by personal service on Dollar Tree's registered agent on July 11, 2007. The first date Dollar Tree received the Complaint and Summons was July 11, 2007. A true and correct copy of the Summons is attached hereto as **Exhibit B**, and true and correct copies of the other documents served with the Complaint and Summons are attached hereto as **Exhibit C**. Exhibits A, B and C constitute all State Court process, pleadings, and orders served on Dollar Tree.

TIMELY REMOVAL OF STATE COURT COMPLAINT

3. Removal of Plaintiff's Complaint is authorized by 28 U.S.C. §§ 1441, 1446 and 1453(b). Given the service date of July 11, 2007, this Notice of Removal is timely in that it has been filed and served within 30 days of the initial receipt of Plaintiff's Summons and Complaint by Dollar Tree. *See Murphy Bros., Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (defendant's period for removal will be no less than 30 days from service).

SUBJECT MATTER JURISDICTION

4. This case is brought by Plaintiff as a class action. Specifically, Plaintiff seeks to represent "[a]ll persons who were employed as a Store Manager by Dollar Tree Stores, Inc. in one or more of its California retail stores at any time on or after July 6, 2003." **Exhibit A** (Compl.) at p. 5, ¶ 18, lines 16-17.

5. Because Plaintiff's Complaint alleges a class action as defined by 28 U.S.C. §1332(d)(1)(B), this Court has original jurisdiction under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified in various sections of Title 28 of the United States Code). CAFA provides in relevant part that the district courts have original jurisdiction over any class action, brought under state or federal law, in which (a) the number of members of all proposed plaintiff classes in the aggregate is at least 100; (b) any member of a class of plaintiffs is a citizen of a State different from any defendant; and (c) the aggregated claims of class members exceed the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d).

NUMEROSITY OF CLASS MEMBERS

6. Plaintiff alleges that the putative class is comprised of “hundreds of individuals.” **Exhibit A** (Compl.) at p. 2, ¶ 4, line 26. Moreover, it is beyond all reasonable dispute that the putative class numbers well in excess of 100. As stated in the Declaration of Kathleen E. Mallas, Dollar Tree’s Vice President and Controller, there are currently 225 store managers employed in the State of California. Declaration of Kathleen E. Mallas, ¶ 6, line 12 (attached hereto as **Exhibit D**).

CITIZENSHIP OF THE PARTIES

7. Plaintiff asserts that at all times relevant to this action, she was employed by Dollar Tree “at one or more of Defendant’s California retail stores.” **Exhibit A** (Compl.), ¶ 11. Dollar Tree’s records also show Plaintiff as residing in Ukiah, California. **Exhibit D** (Mallas Decl.), ¶ 4, lines 4-5. Therefore, Dollar Tree alleges on information and belief that, at the time the Complaint was filed in State Court and at the time of removal, Plaintiff was and continues to be a citizen of the State of California. Moreover, it would be unreasonable to conclude that not one of the putative class members is a California citizen.

8. As of July 6, 2007, the day on which Plaintiff filed this action, Dollar Tree was a Virginia corporation with its principal place of business in Chesapeake, Virginia. **Exhibit D** (Mallas Decl.), ¶ 5. Dollar Tree continues to be a Virginia corporation with its principal place of business in Chesapeake, Virginia. *Id.* Therefore, at the time the Complaint was filed in State Court and at the time of removal, Dollar Tree was and continues to be a citizen of the State of Virginia.

9. Also named in the Complaint are “DOES 1 through 25, inclusive.” “Doe” defendants are disregarded for purposes of determining diversity upon removal. *See e.g., Soliman v. Philip Morris, Inc.*, 311 F.3d 966, 971 (9th Cir. 2002). Moreover, diversity is sufficiently established under CAFA where, as here, any single member of a class of plaintiffs is a citizen of a State different from any defendant. 28 U.S.C. § 1332(d)(2)(A). *See Bush v. Cheaptickets, Inc.*, 425 F.3d 683, 684 (9th Cir. 2005) (CAFA

1 amends the federal diversity statute, 28 U.S.C. § 1332, and now vests original
 2 jurisdiction for class actions in federal court where there is minimal diversity). Therefore,
 3 because Plaintiff is a citizen of the State of California and Dollar Tree is a citizen of the
 4 State of Virginia, the parties are diverse as required by CAFA.

5 JURISDICTIONAL MINIMUM

6 10. As explained below and in the accompanying Mallas Declaration,
 7 the aggregated claims of class members exceed the sum or value of \$5,000,000,
 8 exclusive of interest and costs. **Exhibit D** (Mallas Decl.), ¶ 11.¹

9 11. Plaintiff alleges that Dollar Tree failed to pay its Store Managers
 10 overtime. **Exhibit A** (Compl.), ¶¶ 36-42. Dollar Tree store managers are expected to
 11 work a minimum of 45 hours per week and they are eligible for up to 80 hours of annual
 12 Paid Time Off. **Exhibit D** (Mallas Decl.), ¶¶ 7-8. Assuming *arguendo* that Plaintiff can
 13 establish that Dollar Tree failed to pay overtime (which Dollar Tree disputes), the annual
 14 claims would be valued as follows: 2005 (\$1,718,176.45), 2006 (\$1,862,865.00), and
 15 through June of 2007 (\$999,255.25). The estimated total value of the overtime claim is
 16 \$4,580,296.70. *Id.* at ¶ 11 & Exhibit 1 (worksheet showing calculations).

17 12. Plaintiff also alleges a violation of Labor Code § 226(e). **Exhibit A**
 18 (Compl.), ¶ 54. Section 226(e) provides for a maximum aggregate penalty of \$4,000 per
 19 individual employee. Assuming *arguendo* that Plaintiff can establish a violation of §
 20 226(e) (which Dollar Tree disputes), Ms. Mallas has calculated that, with respect to
 21 employees eligible for the maximum penalty, the total claim for only one year (2006) is
 22 \$824,000.00. **Exhibit D** (Mallas Decl.), ¶ 11 & Exhibit 1 (worksheet showing
 23 calculations).²

24
 25 ¹ In *Williams v. Dollar Tree Stores, Inc.*, Case No. 01CC00329 (Orange County Superior
 26 Court), Dollar Tree resolved a similar lawsuit, which covered a period through December 11,
 2004. The Declaration of Ms. Mallas has excluded from her calculations any amounts paid as a
 result of that settlement. **Exhibit D** (Mallas Decl.), ¶ 9 & 11.

27 ² Plaintiff seeks to enforce this statute pursuant to California's Unfair Competition Law (the
 28 "UCL"), *Cal. Bus. & Prof. Code* § 17200 *et seq.* The UCL has a four-year statute of limitations.
Yeganeh v. Sims, 2006 U.S. Dist. LEXIS 79132 (N.D. Cal. 2006).

13. The sum of the overtime claim together with only a portion of the § 226(e) claim is \$5,404,296.70.

14. In addition, Plaintiff seeks further penalties pursuant to Labor Code § 226.7, **Exhibit A** (Compl. at p. 14, ¶ 5) and §§ 201-203 *Id.* at p. 15, ¶ 7. Labor Code § 226.7 provides for a payment of "one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided." Cal. Lab. Code § 226.7(b). Labor Code § 203 provides for the post-separation continuation of an employee's wages for up to 30 days.

15. Plaintiff also prays for restitution, injunctive relief and attorneys' fees. *Id.* at p. 15, ¶¶ 10, 11, & 14. *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1032-35 (N.D. Cal. 2002) (amount in controversy may include attorneys' fees).

16. Based upon the foregoing, Dollar Tree has established that the amount in controversy requirement is satisfied.

VENUE

17. This action is currently pending in the Superior Court of California in the County of Alameda and, therefore, venue in this Court is proper pursuant to 28 U.S.C. § 84(a), 28 U.S.C. § 1391(a), and LR 3-2(d).

NOTIFICATIONS

18. As required by 28 U.S.C. § 1446(d), Dollar Tree will provide prompt written notice to Plaintiff, by counsel, of removal of this action to federal court.

19. As required by 28 U.S.C. § 1446(d), Dollar Tree will file a copy of this Notice of Removal and Certificate of Interested Entities with the Clerk of the Superior Court of the State of California for the County of Alameda.

CERTIFICATION OF INTERESTED PARTIES

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) a non-financial interest in that subject

1 matter or in a party that could be substantially affected by the outcome of this
2 proceeding: Dollar Tree's shareholders.

3 WHEREFORE, Defendant Dollar Tree Stores, Inc. hereby removes this
4 action from the State Court to the United States District Court for the Northern District of
5 California.

6 DATED: August 6, 2007

Respectfully submitted,

KAUFF McCLAIN & McGUIRE LLP

7
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9 By: 

ALEX HERNAEZ

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11 Attorneys for Defendant
DOLLAR TREE STORES, INC.
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EXHIBIT A



1 Scott Edward Cole, Esq. (S.B. #160744)
 2 Clyde H. Charlton, Esq. (S.B. #127541)
 3 Matthew R. Bainer, Esq. (S.B. #220972)
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 9 www.scalaw.com

10 Attorneys for Representative Plaintiff
 11 and the Plaintiff class

FILED
 ALAMEDA COUNTY

JUL 06 2007

CLERK OF THE SUPERIOR COURT
 By Janet Persif Deputy

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 ROBERT RUNNINGS individually, and
 15 on behalf of all others similarly situated,

16 Plaintiffs,

17 vs.

18 DOLLAR TREE STORES, INC, and
 19 DOES 1 through 25, inclusive,

20 Defendants.

Case No.: RG 07334249

CLASS ACTION

**COMPLAINT FOR DAMAGES,
 INJUNCTIVE RELIEF AND RESTITUTION**

21 Representative Plaintiff alleges as follows:

22 **PRELIMINARY STATEMENT**

23 1. This is a class action, brought on behalf of Robert Runnings (the "Representative
 24 Plaintiff") and all other persons who are or have been employed as a Store Manager by defendant
 25 Dollar Tree Stores, Inc. and Does 1 through 25, inclusive (collectively "Dollar Tree") in any of
 26 Dollar Tree's retail stores in the State of California at any time after the commencement of the pay
 27 period including July 6, 2003. On his own behalf and on behalf of the class, Representative Plaintiff
 28 seeks unpaid wages, including unpaid overtime compensation and interest thereon, meal and rest
 period compensation, waiting time penalties, injunctive and other equitable relief and reasonable
 attorneys' fees and costs, under, *inter alia*, California Labor Code §§ 201, 202, 203, 226, 226.7, 512,

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4. According to these same filings, during fiscal year 2006, Dollar Tree operated 3,219 stores nationwide. In California alone, Dollar Tree has employed hundreds of individuals in recent years as retail Store Managers, an employment position which has not and currently does not meet the test for exemption from the payment of overtime wages or from the entitlement to statutorily-

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1 mandated meal and/or rest periods.

2 5. Despite actual knowledge of these facts and legal mandates, Dollar Tree has enjoyed
3 an advantage over its competition and a resultant disadvantage to its Store Managers by electing not
4 to compensate them for overtime hours worked, compensation for missed meal and/or rest periods,
5 and "waiting time" and related penalties.

6 6. This is hardly the first time Dollar Tree has been made aware of these precise
7 violations with regard to its treatment of Store Managers. Most significantly, on April 17, 2002,
8 Representative Plaintiff's attorneys filed an action in California Superior Court (Orange County),
9 alleging the same violations as are pled in the present action. Although that matter resolved through
10 settlement, Dollar Tree apparently has done little, if anything, to change these practices toward Store
11 Managers.

12 7. As a result of those prior legal proceedings, among other reasons, Representative
13 Plaintiff is informed and believes and, based thereon, alleges that officers of Dollar Tree knew of
14 the occurrence of the violations alleged in this action and the legal mandates which govern such
15 conduct, yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

16 8. Despite Dollar Tree's knowledge of class members' entitlement to full pay for all
17 hours worked, Dollar Tree failed to provide same to class members, in violation of the California
18 Labor Code, IWC Wage Order No. 7 and Title 8 of the California Code of Regulations, among other
19 laws and regulations. This action is brought to redress and end this long-time pattern of unlawful
20 conduct once and for all.

21 JURISDICTION AND VENUE

22 9. This Court has jurisdiction over Representative Plaintiff's and class members' claims
23 under California statutes and, by extension, IWC Wage Order No. 7. This Court also has
24 jurisdiction over Representative Plaintiff's and class members' claims for injunctive relief, and
25 restitution of ill-gotten benefits arising from defendant Dollar Tree's unfair, unlawful and/or
26 fraudulent business practices under Business & Professions Code §§ 17200, *et seq.*

27
28 ////

10. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395(a). Dollar Tree is a corporation, maintaining offices, operating retail stores and doing business in Alameda County, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiff and those similarly situated within the State of California and within Alameda County. Defendant Dollar Tree employed numerous class members in Alameda County during the class period.

PLAINTIFF(S)

11. The Representative Plaintiff is a natural person and was, during the relevant time period identified herein, employed by defendant Dollar Tree in the job position of Store Manager at one or more of Defendant's California retail stores.

12. As used throughout this Complaint, the terms "Plaintiff(s)" and/or "class" refer to the Representative Plaintiff herein, as well as each and every person eligible for membership in the Plaintiff class, as further described and defined below.

13. At all times herein relevant, the Representative Plaintiff was a person within the class of persons further described and defined herein.

14. The Representative Plaintiff brings this action on behalf of himself and as a class action on behalf of all persons similarly situated and proximately damaged by the unlawful conduct described herein, pursuant to California Code of Civil Procedure § 382.

DEFENDANT

15. At all times herein relevant, defendant Dollar Tree and Does 1 through 25, inclusive (collectively referred to as "Dollar Tree" and/or "Defendant") was and are corporations and/or other business entities, duly licensed, located and doing business in, but not limited to, the State of California. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each person responsible for the acts alleged herein was the agent and/or employee of Dollar Tree and, in doing the acts herein alleged, was acting within the course

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and scope of such agency and/or employment.

16. Those defendants identified as Does 1 through 25, inclusive, are and were, at all relevant times herein-mentioned, co-employers of some/each of the remaining defendants.

17. Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants is responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein alleged and that Representative Plaintiff's and the class members' damages, as herein alleged, were proximately caused thereby.

CLASS ACTION ALLEGATIONS

18. The Representative Plaintiff brings this action on behalf of himself and as a class action on behalf of all persons similarly situated and proximately damaged by Dollar Tree's conduct as set forth herein, including, but not necessarily limited to the following class:

All persons who were employed as a Store Manager by Dollar Tree Stores, Inc. in one or more of its California retail stores at any time on or after July 6, 2003.

19. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable, to wit:

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that the total number of class members is well into the hundreds of individuals. Membership in the Plaintiff class will be determined upon analysis of employee and payroll, among other potential records maintained by Dollar Tree.
- b. Commonality: The Representative Plaintiff and the class members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

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- i. Whether defendant Dollar Tree violated California law by failing to pay compensation to Dollar Tree's employees for all time worked;
 - ii. whether defendant Dollar Tree violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide uninterrupted meal and/or rest periods to Representative Plaintiff and the class members;
 - iii. whether defendant Dollar Tree violated California Business and Professions Code § 17200 by engaging in unfair, unlawful and/or fraudulent business practices;
 - iv. whether defendant Dollar Tree violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - v. whether defendant Dollar Tree violated California Labor Code §§ 201-203 by failing to pay wages due and owing at the time that class members' employment with Defendant terminated;
 - vi. whether Defendant Dollar Tree violated California Labor Code § 226 by failing to provide the semimonthly itemized statements to class members of total hours worked by each, and all applicable hourly rates in effect during the pay period; and
 - vii. whether Representative Plaintiff and class members are entitled to "waiting time" penalties pursuant to California Labor Code § 203.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Plaintiff class. The Representative Plaintiff and all members of the class sustained injuries and damages arising out of and caused by defendant Dollar Tree's common course of conduct in violation of California law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impracticable for members of the class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the class, in that the Representative Plaintiff's claims are typical of those of the class and the Representative Plaintiff has the same interests in the litigation of this case as the class members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

20. As described herein, Dollar Tree has, for years, knowingly failed to adequately compensate Store Managers for all wages earned, including overtime wages and/or compensation for missed meal and/or rest periods, and due under the California Labor Code and the applicable California Wage Order, thereby enjoying a significant competitive edge over other retail stores and/or retail chains.

21. Even upon termination or resignation of the employment of numerous class members, Dollar Tree has declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

22. Moreover, California Labor Code §§ 201 and 202 require defendant Dollar Tree to pay all severed employees all wages due, immediately upon discharge or within 72 hours of resignation of their positions, in most circumstances. California Labor Code § 203 provides that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, for a period not to exceed 30 days of wages.

23. Furthermore, despite its knowledge of the Representative Plaintiff's and the class members' entitlement to compensation for all hours worked, Dollar Tree violated California Labor Code § 1174(d) by failing to provide or require the use, maintenance or submission of time records by members of the class. Dollar Tree also failed to provide Representative Plaintiff and class members with accurate semimonthly itemized statements of the total number of hours worked by each and all applicable hourly rates in effect during the pay period, in violation of California Labor Code § 226. In so doing, Dollar Tree has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude (i.e., the full number of hours worked) and financial impact of its wrongdoing.

24. Representative Plaintiff and all persons similarly situated are entitled to unpaid compensation, yet, to date, have not received such compensation despite the termination of certain class members' employment with Dollar Tree.

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25. More than 30 days have passed since Representative Plaintiff and/or certain class members have left defendant Dollar Tree's employ.

26. As a consequence of defendant Dollar Tree's willful conduct in not paying compensation for all hours worked, certain class members are entitled to 30 days wages, as a penalty under Labor Code § 203, together with attorneys' fees and costs.

27. As a consequence of defendant Dollar Tree's willful conduct in not providing an uninterrupted 30 minute meal period within the first five hours of class members' shifts, as required under Labor Code § 512 and Section 11 of IWC Wage Order No. 7, class members are entitled to one hour of wages for each day that they were denied at least one meal period, as provided under Labor Code § 226.7, together with interest thereon and attorneys' fees and costs.

28. As a consequence of defendant Dollar Tree's willful conduct in not providing a ten minute rest period once during each four hour segment of work, as prescribed by Section 12 of IWC Wage Order No. 7, class members are entitled to one hour of wages for each day that they were denied at least one rest period, as provided under Labor Code § 226.7, together with interest thereon and attorneys' fees and costs.

29. As a direct and proximate result of Dollar Tree's unlawful conduct, as set forth herein, Representative Plaintiff and class members have sustained damages, as described above, including compensation for missed meal and rest periods, and loss of earnings for hours worked on behalf of Defendant, in amounts to be established, in a formulaic manner, at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and/or certain class members herein are entitled to recover "waiting time" penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide semimonthly statements of hours worked and all applicable hourly rates (pursuant to Labor Code § 226) in an amount to be established, in a formulaic manner, at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and class members are also entitled to recover costs and attorneys' fees, pursuant to California Labor Code § 1194 and/or California Civil Code § 1021.5, among other authorities.

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30. Representative Plaintiff seeks injunctive relief, prohibiting Defendant from engaging in the illegal labor acts described herein in the future. Representative Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and class members under California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will continue unchecked, while Representative Plaintiff and class members bear the financial brunt of Defendant's unlawful conduct. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff class are also entitled to recover costs and attorneys' fees, pursuant to statute.

FIRST CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

31. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

32. Representative Plaintiff brings this cause of action, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of herein, and seeking restitution from Defendant through the unfair, unlawful and fraudulent business practices described herein.

33. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful, unfair and/or fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208. Specifically, Defendant conducted business activities while failing to comply with the legal mandates cited herein.

34. Defendant's knowing failure to adopt policies in accordance with and/or to adhere to these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as set forth in California Business & Professions Code §§ 17200-17208.

35. Particularly in light of its repeated violations of these laws, despite the pursuit of prior litigation against it for same, it is clear that Defendant has established a policy of accepting a certain amount of collateral damage, as represented by the damages to Representative Plaintiff and the Plaintiff class herein alleged, as incidental to its business operations, rather than accept the

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1 alternative costs of full compliance with fair, lawful and honest business practices ordinarily borne
2 by responsible competitors of Defendant and as set forth in legislation and the judicial record.

3
4 **SECOND CAUSE OF ACTION**
5 **UNLAWFUL FAILURE TO PAY ALL WAGES DUE**
6 **(Violation of California Wage Order 7 and California Labor Code)**

7 36. Representative Plaintiff incorporates in this cause of action each and every allegation
8 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

9 37. On one or more dates since July 6, 2003, Representative Plaintiff and the class
10 members were employed by and did perform work for Dollar Tree, oftentimes in excess of eight
11 hours in a workday and/or forty hours in a workweek. The precise number of hours and the attendant
12 damages will be proven in a formulaic manner at trial.

13 38. During said time period, Dollar Tree refused to compensate Representative Plaintiff
14 and class members for some and/or all of the wages due them, including overtime wages and
15 compensation for missed meal and/or rest periods, in violation of the applicable California Wage
16 Order and/or the California Labor Code.

17 39. Moreover, during said time period, many of the class members herein were employed
18 by and were thereafter terminated or resigned from their positions with Dollar Tree, yet were not
19 paid all wages due upon said termination or within seventy-two (72) hours of said resignation of
20 employment therefrom. Said non-payment of all wages due was the direct and proximate result of
21 a willful refusal to do so by Defendant.

22 40. At all relevant times, Defendant was aware of and was under a duty to comply with
23 various provisions of the applicable IWC California Wage Order as well as California Labor Code
24 §§ 201-203, 510, 1198 and 1199.

25 41. By refusing to compensate Representative Plaintiff and class members for all wages
26 earned, Defendant violated those California Labor Code and IWC Wage Order provisions cited
27 herein.

28 42. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
Representative Plaintiff and class members have sustained damages, including loss of earnings for

hours of overtime worked on behalf of Defendant, in an amount to be established, in a formulaic manner, at trial, plus interest thereon. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and class members are entitled to recover "waiting time" and other penalties, in amounts to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

**THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)**

43. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

44. California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

45. At all relevant times, Defendant was aware of and was under a duty to comply with California Labor Code §§ 226.7 and 512.

46. Specifically, California Labor Code § 226.7 provides:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

////

////

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47. Sections 11 and 12, respectively, of IWC Wage Order No. 7 mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

48. Section 11 of the IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes (C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided

Moreover, Section 12 of the IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

49. By failing to consistently provide uninterrupted thirty-minute meal periods within the first five hours of work each day and/or uninterrupted ten-minute net rest periods to Representative Plaintiff and the remaining class members, Defendant violated California Labor Code and IWC Wage Order provisions.

50. Representative Plaintiff is informed and believes and, based thereon, alleges that Dollar Tree has never paid the one hour of compensation to any class member due to its violations of these California Labor Code and IWC Wage Order provisions.

51. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and class members have sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established, in a formulaic manner, at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and class members are entitled to recover "waiting time" and

1 other penalties, in amounts to be established at trial, as well as costs and attorneys' fees, pursuant
2 to statute.

3
4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
6 **(California Labor Code §§ 226, 1174)**

7 52. Representative Plaintiff incorporates in this cause of action each and every allegation
8 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

9 53. California Labor Code § 226(a) provides:

10 Each employer shall semimonthly, or at the time of each payment of
11 wages, furnish each of his or her employees either as a detachable
12 part of the check, draft or voucher paying the employee's wages, or
13 separately when wages are paid by personal check or cash, an
14 itemized wage statement in writing showing: (1) gross wages earned;
15 (2) total number of hours worked by each employee whose
16 compensation is based on an hourly wage; (3) all deductions;
17 provided, that all deductions made on written orders of the employee
18 may be aggregated and shown as one item; (4) net wages earned; (5)
19 the inclusive date of the period for which the employee is paid; (6)
20 the name of the employee and his or her social security number; and
21 (7) the name and address of the legal entity which is the employer.

22 54. Moreover, California Labor Code § 226(e) provides:

23 An employee suffering injury as a result of a knowing and intentional
24 failure by an employer to comply with subdivision (a) is entitled to
25 recover the greater of all actual damages or fifty dollars (\$50) for the
26 initial pay period in which a violation occurs and one hundred dollars
27 (\$100) per employee for each violation in a subsequent pay period,
28 not exceeding an aggregate penalty of four thousand dollars (\$4,000),
and is entitled to an award of costs and reasonable attorney's fees.

29 55. Finally, California Labor Code § 1174 provides:

30 Every person employing labor in this state shall: (d) Keep, at a
31 central location in the state... payroll records showing the hours
32 worked daily by and the wages paid to ... employees These
33 records shall be kept in accordance with rules established for this
34 purpose by the commission, but in any case shall be kept on file for
35 not less than two years.

36 56. Dollar Tree failed to provide timely, accurate itemized wage statements to
37 Representative Plaintiff and class members in accordance with Labor Code § 226(a). Specifically,
38 none of the statements provided by Defendant to Representative Plaintiff and class members has

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1 accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions
2 therefor.

3 57. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
4 Representative Plaintiff and class members seek to recover penalties, in amounts to be established,
5 in a formulaic manner, at trial, as well as costs and attorneys' fees, pursuant to statute.

6
7 **RELIEF SOUGHT**

8 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and the proposed
9 Plaintiff class, prays for judgment and the following specific relief against Defendant(s), jointly
10 and separately, as follows:

11 1. For an Order certifying the proposed class and/or any other appropriate subclass
12 under CCP § 382;

13 2. For a finding that Dollar Tree violated the provisions of California Labor Code § 201
14 and Title 8 California Code of Regulations § 11070(9)(A) as to the Representative Plaintiff and the
15 Plaintiff class;

16 3. That the Court declare, adjudge and decree that Dollar Tree violated the overtime
17 provisions of the California Labor Code and the applicable Industrial Wage Commission California
18 Wage Order as to the Representative Plaintiff and the Plaintiff class;

19 4. That the Court make an award to Representative Plaintiff and the Plaintiff class of
20 damages for the amount of unpaid compensation, including interest thereon, and penalties, in
21 amounts to be proven, in a formulaic manner, at trial;

22 5. That the Court declare, adjudge and decree that defendant Dollar Tree violated its
23 legal duties under California Labor Code §§ 226.7 and/or 512 and the relevant Sections of the
24 applicable IWC Wage Order to pay wages for missed meal and/or rest periods;

25 6. That the Court declare, adjudge and decree that Dollar Tree violated the record
26 keeping provisions of California Labor Code §§ 226(a) and 1174(d) and the relevant Wage Order
27 as to Representative Plaintiff and the class members, and for willful failure to provide accurate
28 semimonthly itemized statements thereto;

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ATTORNEYS AT LAW
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OAKLAND, CA 94612
TEL: (510) 881-0881

7. That the Court declare, adjudge and decree that Dollar Tree violated California Labor Code §§ 201-203 for willful failure to pay all compensation owed at the time of termination of employment to Representative Plaintiff and/or other class members;

8. That the Court declare, adjudge and decree that Dollar Tree violated California Business and Professions Code § 17200, et. seq. by failing to pay Representative Plaintiff and class members overtime and/or other forms of compensation and, generally, by misclassifying Representative Plaintiff and class members as overtime-exempt employees;

9. For an Order requiring Dollar Tree to pay restitution to Representative Plaintiff and the Plaintiff class as a result of Dollar Tree's unfair, unlawful and/or fraudulent activities, pursuant to Business and Professions Code §§ 17200-08;

10. For an injunction, enjoining defendant Dollar Tree to cease and desist from further unfair, unlawful and/or fraudulent activities in violation of Business and Professions Code § 17200;

11. For punitive/exemplary damages in an amount appropriate and sufficient to punish Defendant, and to deter others from engaging in similar misconduct in the future;

12. For all other Orders, findings, and determinations identified and sought in this Complaint;

13. For interest on the amount of any and all economic losses, at the prevailing legal rate;

14. For reasonable attorneys' fees, pursuant to statute; and

15. For costs of suit and any and all such other relief as the Court deems just and proper.

Dated: July 6, 2007

SCOTT COLE & ASSOCIATES, APC

By:



Scott Edward Cole, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff class

EXHIBIT B

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DOLLAR TREE STORES, INC, and DOES 1 through 25, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ROBERT RUNNINGS individually, and on behalf of all others similarly situated.



00

FILED
ALAMEDA COUNTY

JUL 06 2007

CLERK OF THE SUPERIOR COURT
By Jasha Perry Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda County Superior Court

Rene C. Davidson Courthouse

1225 Fallon Street, Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Scott Edward Cole, Esq., SCOTT COLE & ASSOCIATES, APC

1970 Broadway, Ninth Floor, Oakland, CA 94612 (510) 891-9800

CASE NUMBER:
(Número del Caso)

128 073 34249

DATE:

(Fecha)

JUL 06 2007

PAT S. SWEETEN

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

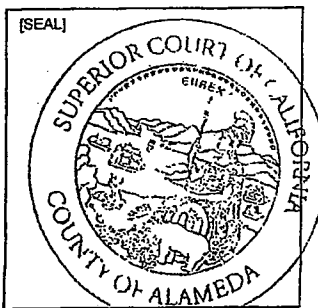


EXHIBIT C



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Scott Edward Cole, Esq. (S.B. #160744) SCOTT COLE & ASSOCIATES, APC 1970 Broadway, Ninth Floor, Oakland, CA 94612 TELEPHONE NO.: (510) 891-9800 FAX NO.: (510) 891-7030		FILED ALAMEDA COUNTY JUL 06 2007 CLERK OF THE SUPERIOR COURT By <i>[Signature]</i> CASE NUMBER 07334249 JUDGE: DEPT.:
ATTORNEY FOR (Name): Robert Runnings, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: Same CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse		
CASE NAME: Robert Runnings, et al. v. Dollar Tree Stores, Inc., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental /Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial post-judgment judicial supervision |
3. Type of remedies sought (check all that apply):
- | | | |
|-------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------|
| a. <input checked="" type="checkbox"/> monetary | b. <input checked="" type="checkbox"/> nonmonetary; declaratory or injunctive relief | c. <input checked="" type="checkbox"/> punitive |
|-------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------|
4. Number of causes of action (specify): Four (4)
5. This case ☒ is ☐ is not a class action suit.
- Date: July 6, 2007

Scott Edward Cole, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT D

1 MAUREEN E. McCLAIN (State Bar No. 062050)
Email: mcclain@kmm.com
2 ALEX HERNAEZ (State Bar No. 201441)
Email: hernaez@kmm.com
3 KAUFF McCLAIN & McGUIRE LLP
One Post Street, Suite 2600
4 San Francisco, California 94104
Telephone: (415) 421-3111
5 Facsimile: (415) 421-0938

6 Attorneys for Defendant
DOLLAR TREE STORES, INC.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 ROBERT RUNNINGS individually, and on
behalf of all others similarly situated,

12 Plaintiff,
13

14 v.

15 DOLLAR TREE STORES, INC, and DOES
1 through 25, inclusive,

16 Defendants.
17

CASE NO. _____
Alameda County Superior Court
Case No. RG 07334249

**DECLARATION OF KATHLEEN
E. MALLAS IN SUPPORT OF
NOTICE OF REMOVAL**

COMPLAINT FILED: July 6, 2007
TRIAL DATE: No date set.

18 I, Kathleen E. Mallas, declare as follows:

19 1. I am over the age of 18. The facts stated herein are true of my own
20 personal knowledge. If called upon as a witness, I would testify competently thereto.

21 2. I have been employed by Dollar Tree Management, Inc., a wholly
22 owned subsidiary of Dollar Tree Stores, Inc. (collectively "Dollar Tree") at its corporate
23 headquarters in the finance department located at 500 Volvo Parkway, Chesapeake,
24 Virginia, since 1997. I am providing this Declaration to support Dollar Tree's removal to
25 federal court of the action filed against it by Plaintiff Robert Runnings ("Plaintiff").

26 3. I am a certified public accountant and am currently employed as
27 Dollar Tree's Vice President and Controller. In connection with my job duties, I am
28 familiar with Dollar Tree's policies and practices. In making this Declaration, I reviewed

1 Dollar Tree's payroll records with respect to its California store managers and reviewed
2 its records for opening dates for stores in the state of California. These items are kept
3 by Dollar Tree in the course of its regularly conducted business activity.

4 4. As reflected in Dollar Tree's records, Plaintiff's last known address is
5 in Ukiah, California.

6 5. On July 6, 2007, Dollar Tree was a Virginia corporation with its
7 principal place of business in Chesapeake, Virginia. Dollar Tree continues to be a
8 Virginia corporation with its principal place of business in Chesapeake, Virginia.

9 6. In the course of doing business, Dollar Tree maintains payroll
10 records that permit it to identify each store manager within the State of California and the
11 amount each is paid. Based upon my review of Dollar Tree's payroll records as of July
12 20, 2007, 225 store managers are employed in the state of California and their average
13 pay is \$50,158.70.

14 7. In making this Declaration, I consulted with Gary Philbin, Chief
15 Operating Officer of Dollar Tree concerning Dollar Tree's requirements of the minimum
16 hours to be worked by its store managers in the state of California. He stated that store
17 managers are expected to work a minimum of 45 hours per week.

18 8. In making this Declaration, I reviewed Dollar Tree's paid time off
19 policy and ascertained that store associates, including store managers, are eligible for
20 up to 80 hours per year of paid time off during their first five years of employment.

21 9. In the course of doing business, Dollar Tree maintains records of the
22 dates that its stores opened. Based on my review of these records, Dollar Tree operated
23 190 stores in California on January 1, 2005; 206 stores in California on January 1, 2006;
24 and 221 stores in California on January 1, 2007.

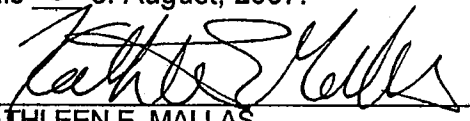
25 10. In making this Declaration, I reviewed a confidential settlement
26 agreement between Dollar Tree and Michael Williams and ascertained that it covered all
27 periods up to and including December 11, 2004.

28 11. After considering all of the foregoing information and the penalty for

1 failure to provide accurate wage statements, I have determined that the damages being
2 sought by the plaintiff in this matter are in excess of \$5.0 million. The calculations that I
3 used to come to this conclusion are shown on the attached Exhibit A which I prepared.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed in Chesapeake, Virginia this 3 of August, 2007.

6 
7 KATHLEEN E. MALLAS

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EXHIBIT A

Dollar Tree Stores, Inc.
 Estimate of Potential Exposure
 As of July 26, 2007

Summary of allegation: Plaintiff alleges that store managers in CA should be non-exempt and compensated for overtime hours worked.
 Assumptions:

Store managers work approximately 45 hours per week.
 Store managers are eligible for up to 80 hours of vacation time during their first five years.
 The Williams case covered the period through December 11, 2004.

Average annual store manager salary	50,158.70
Straight-time annual hours	<u>2,080</u>
Average rate per hour	24.11
Annual overtime hours alleged	<u>375.00</u>
Amount allegedly owed per associate	9,043.03

50 weeks with 7.5 hours for each week

Number of stores in CA at start of 2007	221
Number of stores in CA at start of 2006	206
Number of stores in CA at start of 2005	190

Potential exposure for 2007	999,255.25	Calculated through June 2007
Potential exposure for 2006	1,862,865.00	
Potential exposure for 2005	<u>1,718,176.45</u>	
Estimated wage exposure	4,580,296.70	
Penalty for failure to provide accurate wage statements	824,000.00	See Note below
Total estimated exposure	5,404,296.70	

Note: Paragraph 54 of the complaint references the penalty for failure to provide accurate wage statements as \$50 for the first instance and \$100 thereafter up to a \$4,000 per person maximum. Associates that are employed for more than 40 weeks for which the penalty were due would reach the \$4,000 maximum. The calculation is for a one year period only and assumes 206 stores (total open in CA at January 1, 2006) at the \$4,000 maximum.

CERTIFICATE OF SERVICE BY HAND DELIVERY

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is One Post Street, Suite 2600, San Francisco, California 94104. On **August 6, 2007**, I served a true and correct copy of the within documents:

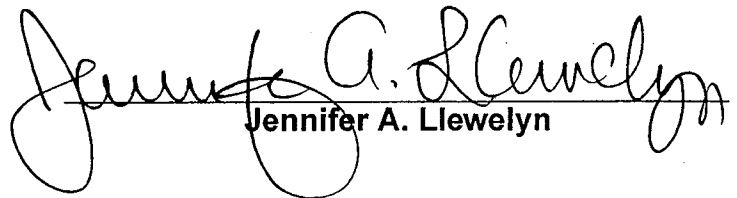
**NOTICE OF REMOVAL AND CERTIFICATE OF
INTERESTED ENTITIES**

on the interested parties in said action by placing true and correct copies in a sealed envelope and giving it into the care of Freewheelin' Attorney Service for same-day hand delivery to the parties as follows:

**Scott Edward Cole, Esq.
Scott Cole & Associates, APC
1970 Broadway, Ninth Floor
Oakland, CA 94612**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 6, 2007**, at San Francisco, California.


Jennifer A. Llewelyn

120208.v1